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ABSTRACT

Part 1 of this document summarizes the Americans with Disabilities Act (ADA) of 1990. Part 2 reviews the act's provisions that prohibit discrimination against disabled individuals in employment. Topics addressed are: (1) individuals protected under the act; (2) the essential functions of jobs; (3) prohibited discrimination; (4) requirements for employers to make reasonable accommodations for disabled employees; (5) provisions concerning employees who handle food; (6) smokers and individuals who use drugs and alcohol; (7) medical questions and examinations; (8) architectural changes that employers are required to make to their facilities to accommodate disabled employees; and (9) enforcement of the act. Part 3 reviews the act's provisions that prohibit discrimination against disabled individuals in public accommodations. Topics considered are prohibited discrimination, including discrimination in public transportation; health and safety exceptions; requirements for building new and altering existing facilities to accommodate disabled individuals; and enforcement. Part 4 provides a checklist of requirements of the ADA which concern employers. Part 5 contains a list of some of the disabilities covered by the ADA. (BC)

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HOGAN & HARTSON

# The Americans With Disabilities Act of 1990

**Summary**

**Employment Provisions**

**Public Accommodations Provisions**

**Checklist**

**Examples of Disabilities**

**Prepared for the**

## National Child Care Association

**December 5, 1991**

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# Table of Contents


I. Summary of the Americans With Disabilities Act . . . . . 3

II. Employment . . . . . 4

1. Individuals Protected Under the ADA . . . . . 4

2. Essential Functions of A Job . . . . . 5

3. Prohibited Discrimination . . . . . 6

4. The Requirement to Make "Reasonable Accommodation" . . . . . 7

5. Food Handlers . . . . . 8

6. Smokers and Alcohol Users . . . . . 9

7. Medical Questions and Examinations . . . . . 9

8. Architectural Changes . . . . . 10

9. Enforcement . . . . . 11

III. Public Accommodations . . . . . 12

1. Prohibited Discrimination . . . . . 12

2. Health and Safety Exception . . . . . 14

3. New Construction and Alterations in Public Accommodations . . . . . 14

4. Enforcement . . . . . 15

IV. Checklist Under the ADA . . . . . 16

V. Examples of Disabilities . . . . . 21

## I. Summary of the Americans With Disabilities Act.

The ADA was signed into law on July 26, 1990, in order to provide persons with disabilities protections against discrimination in employment, public transportation services, public accommodations operated by private entities, and telecommunication services. Each subpart of the ADA has its own effective date.

The employment provision of the law prohibits most employers from discriminating in employment against a "qualified individual with a disability," and requires these employers to provide reasonable accommodations for disabled workers unless it would be an "unreasonable hardship" to do so.

The public accommodations provisions of the ADA prohibit private entities serving the public (such as child care facilities) from discriminating against disabled individuals, and requires these entities to make services and establishments accessible to disabled persons. The ADA requires most new facility construction by such firms to be accessible to disabled persons, and mandates that existing facilities be made accessible to the extent modifications are "readily achievable." The ADA also requires all "commercial facilities" -- whether or not they are public accommodations -- to make newly constructed or altered facilities accessible to disabled individuals.

Other provisions of the ADA prohibit discrimination in public transportation and generally require, on a phased-in basis, that new public transportation equipment be accessible to disabled persons. The law also requires telephone companies to provide special services for hearing and speech-impaired individuals by July 26, 1993.

## II. Employment

Beginning July 26, 1992, for employers with 25 or more employees, and July 26, 1994, for employers with 15-24 employees, the ADA prohibits a covered employer from discriminating against a "qualified individual with a disability" in job application procedures, hiring, advancement, discharge, employee compensation, job training, and other terms, conditions and privileges of employment.[1]

1. Individuals Protected Under the ADA

Under the ADA, an individual with a "disability" is someone who: (1) has a physical impairment that substantially limits one or more major life activities; (2) has a record of such an impairment; or (3) is regarded as having such an impairment. The ADA specifically excludes a number of conditions -- such as transvestism, transsexualism, pedophilia, exhibitionism, etc. -- from the definition of disability.

The Equal Employment Opportunity Commission (EEOC) regulations state that "physical or mental impairments" include a number of conditions, such as physiological disorders and conditions, disfigurement, anatomical loss affecting a specified body system (for example, the neurological, respiratory or skin systems), and any mental or psychological disorder (for example, mental retardation or learning disabilities).

The regulations also define "major life activities" to include such functions as caring for oneself, walking, seeing, hearing, speaking, breathing, learning and working. In addition, a number of factors are considered in determining whether an individual is "substantially limited" in a major life activity, such as the nature and severity of the impairment, the duration of the impairment, and the expected impact resulting from the impairment.

Based on recent court cases and on the EEOC's interpretive guidance, persons with AIDS or infected by the HIV virus would be considered disabled persons for purposes of the ADA's protection. The EEOC also has specifically indicated that pregnancy is not considered a disability for purposes of the ADA (although discrimination on account of pregnancy is, of course, prohibited under other federal and state laws). In addition, the EEOC has stated that lack of education is not considered a disability; therefore, an illiterate individual would not be covered

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[1] Even before the ADA was enacted, certain federal government contractors and federal grantees were prohibited from discriminating against qualified disabled persons in employment, and were required to make reasonable accommodation for the disabled. In addition, many state and local laws prohibit such discrimination and require appropriate accommodation. The ADA extends prohibitions on discrimination against the disabled and the requirement of reasonable accommodation to most private employers.

under the ADA if the illiteracy was a result of lack of education (as opposed to a bona fide disability such as dyslexia).

2. Essential Functions of A Job

The ADA protects "qualified individuals with disabilities," which means disabled individuals who (with or without reasonable accommodations) can perform the "essential functions" of the job sought or held. The regulations define "essential functions" of a job as the "fundamental job duties." The regulations state that evidence of essential functions includes:

- the employer's judgment concerning which job functions are essential;
- a written job description, prepared before advertising or interviewing applicants;
- the amount of time spent on the job performing the function;
- the consequences of not requiring the incumbent to perform the function;
- the terms of a collective bargaining agreement;
- the work experience of past incumbents in the job; and
- the current work experience of incumbents in similar jobs.

The EEOC has indicated that employers are not expected to lower their standards; for example, an employer which requires typists to type 75 words per minute need not settle for a typist who types 55 words per minute. However, if an employer has a particular job specification which it claims is an essential function (for example, the ability to type 75 words per minute), it must be prepared to show that employees are actually required to perform the function (for example, that employees actually type 75 words per minute in their jobs).

The EEOC's regulations also allow an employer to require that an individual not pose a "direct threat" to the health or safety of the individual or others. According to the EEOC, a "direct threat" means that there is a high probability of substantial harm, based on valid medical analyses or other objective evidence. For example, an employer would not be required to hire a person disabled by narcolepsy (resulting in frequent and unexpected losses of consciousness) into a job requiring use of dangerous equipment. If, however, an individual poses such a threat because of a disability, the employer must determine whether "reasonable accommodation" (as discussed below) would acceptably reduce the risk before making a decision which is adverse to the applicant or the employee.

3. Prohibited Discrimination

The law essentially extends the protections against discrimination provided by Title VII of the Civil Rights Act of 1964 to qualified disabled persons. Under the ADA, an employer will be prohibited from discriminating against qualified individuals with disabilities in all aspects of an employment relationship (such as hiring, compensation and conditions of work). In addition, the law goes beyond traditional Title VII protections by providing that an employer may not discriminate against someone because he or she has a family, business, social or other relationship with someone who has a known disability (such as AIDS).

The EEOC has stated publicly and in its interpretive guidance that the ADA does not require an employer to prefer a qualified disabled individual over an equally qualified individual without a disability. However, an employer may not reject the qualified disabled individual because of the disability or because of the need to make reasonable accommodation for the disabled individual to perform the job.

The EEOC's interpretive guidance further discusses the types of prohibited conduct. For example, the EEOC has stated that an employer may not limit a disabled employee's duties based on the employer's presumption about what is "best" for the employee or a presumption about what the employee is able to do. Employers may not have separate job promotion or progression "tracks" for disabled employees. In addition, an employer may not essentially "segregate" disabled employees, by assigning them to a particular office or installation, or by maintaining separate non-work facilities (such as lunchrooms or lounges).

With regard to insurance, the EEOC's interpretive guidance notes that disabled employees must be given equal access to health insurance provided to other employees, although employers may continue to offer policies containing pre-existing condition clauses (as long as the clauses apply equally to all employees and are not deemed to be a method of evading the ADA). Similarly, an employer's leave policies and benefit plans that are uniformly applied do not violate the ADA (again, as long as the policy or a change in the policy is not intended to evade the ADA's requirements).

The ADA also prohibits employers from entering into contractual relationships which have the effect of skirting the employer's requirements under the law. For example, the EEOC has stated that an employer wishing to provide an employee training seminar may not contract with an outside contractor or hotel which is unable to provide accommodation to disabled employees.

Under the ADA, employers also must be extremely careful to ensure that tests administered for purposes of making employment decisions are job-related and consistent with business necessity. This is especially so if a test tends to screen out disabled individuals. In addition, the ADA requires that employers accommodate employees in the administration of tests. For example, the EEOC's interpretive

guidance states that a dyslexic applicant may be entitled to an oral examination instead of a written examination, unless the examination is being given to test the person's ability to read (and assuming that reading is an "essential function" of the job).

4. The Requirement To Make "Reasonable Accommodations"

Aside from prohibiting discrimination, the ADA also requires an employer to make "reasonable accommodations" to the known physical and mental limitations of qualified disabled individuals unless the business can demonstrate that the accommodations would impose an "undue hardship."

Under the law, "reasonable accommodation" includes: (1) making existing facilities (both work areas and non-work areas such as lunchrooms and restrooms) used by employees readily accessible to and usable by individuals with disabilities; and (2) job restructuring, part-time or modified work schedules, reassignment to a vacant position, acquisition or modification of equipment or devices, appropriate adjustment or modifications of examinations, training materials or policies, the provision of qualified readers or interpreters, and other similar accommodations for individuals with disabilities. The regulations also state that it may be necessary for the employer to engage in "an informal, interactive process" with the disabled individual in order to identify reasonable accommodations.

In its interpretive guidance, the EEOC has provided some further advice on certain types of reasonable accommodations. For example, with regard to job restructuring, the EEOC has stated that an employer should consider reallocating or redistributing nonessential "marginal" job functions; an employer is not required to reallocate essential functions. An employer also may restructure a job by changing how a job will be performed (for example, allowing an individual who cannot write to perform his/her functions on a computer) or when it is to be performed. The EEOC has stated that accommodating an employee by reassigning him/her to a vacant position should be considered only if accommodating the individual in his/her current position poses an undue hardship.

As noted above, however, an employer is not required to make accommodations that it can prove would impose an "undue hardship." Undue hardship, according to the EEOC's interpretive guidance, means significant difficulty or expense as a result of the accommodation. The term refers to accommodations that would be "unduly costly, extensive, substantial, or disruptive, or that would fundamentally alter the nature or operation of the business." Factors that are considered in determining whether a specific accommodation would impose an undue hardship include, among others:

- the nature and cost of the accommodation (taking into account tax credits and deductions, as well as outside funding);
- the overall financial resources of the facility;
- the number and type of employees at the facility;
- the type of operations at the facility; and
- the impact of the accommodation on the operation of the facility (including the impact of the accommodation on other employees' ability to perform their duties).

The EEOC's interpretive guidance also indicates that if high cost is the reason an employer claims an accommodation creates an undue hardship, the disabled employee should be given the opportunity to contribute toward the cost of the accommodation.

5. Food Handlers

The ADA allows employers to refuse to assign an individual to a food handling job if the individual has an "infectious" or "communicable" disease which the Secretary of Health and Human Services has determined "may be transmitted through handling the food supply," and the risk of transmission cannot be eliminated through reasonable accommodations. On May 16, 1991, the Public Health Service issued two lists of diseases which may be transmitted by food handlers. The first list, which consists of pathogens "often transmitted by food contaminated by infected persons who handle food," contains the following:

- Hepatitis A virus;
- Norwalk and Norwalk-like viruses;
- Salmonella typhi;
- Shigella species;
- Staphylococcus aureus; and
- Streptococcus pyogenes.

The second list states those diseases which more directly concern manufacturers of food items. This list, consisting of "pathogens occasionally transmitted by food contaminated by infected persons who handle food, but usually transmitted by contamination at the source or in food processing or by non-foodborne routes, includes:

- Campylobacter jejuni;
- Entamoeba histolytica;
- Enterohemorrhagic Escherichia coli;
- Enterotoxigenic Escherichia coli;
- Giardia lamblia;
- Nontyphoidal Salmonella;
- Rotavirus;
- Vibrio cholerae 01; and
- Yersinia enterocolitica.

Neither list contains AIDS or HIV-infection as a disease which could be transmitted through food handling. Accordingly, individuals with AIDS or HIV-infection may not be excluded from food handling jobs based on these conditions.

6. Smokers and Drug and Alcohol Users

Employers may prohibit the use of alcohol or illegal drugs while on the job, and may require that employees not be under the influence of alcohol or illegal drugs in the workplace. An employer may hold a drug user or alcoholic to the same standards for employment or job performance as other individuals, even if unsatisfactory performance is related to the drug use or alcoholism of the employee.

The ADA specifically excludes current users of illegal drugs from the category of protected disabled persons. However, the law does protect an individual who has successfully completed a supervised drug rehabilitation program, is being rehabilitated and no longer uses illegal drugs, or is incorrectly regarded as engaging in illegal drug use.

The law also does not prohibit employers from imposing restrictions -- including prohibitions -- on smoking in the workplace.

7. Medical Questions and Examinations

The ADA regulates medical questions at three different time periods: (1) before an applicant is offered employment; (2) after an individual is offered employment conditioned on the results of a medical examination; and (3) after employment begins.

a. Pre-Employment Offer

The ADA prohibits employers from conducting pre-employment medical examinations or asking job applicants whether they have a disability, although pre-employment inquiries into the ability of an applicant to perform job-related functions are permitted. The interpretive guidance also clarifies that an employer does not violate the ADA by collecting information needed to satisfy the requirements of the federal Rehabilitation Act (e.g., which requires that certain employers, such as government contractors, collect information on disabled individuals). In addition, under the ADA, tests to determine illegal drug use are not considered medical examinations. However, the EEOC's interpretive guidance notes that questions concerning an applicant's workers' compensation history may not be asked.

b. Post-Offer/Pre-Employment

The ADA permits employers to require medical examinations of new hires after a job offer has been made, but before the new hire begins work, and allows employers to condition the offer on the results of such an examination (i.e., if the results show that the individual could not perform the essential functions of the job with or without reasonable accommodation). In order for an employer to require such a medical examination, however, all entering employees in the same job category must be subjected to the examination. The ADA requires information collected as a result of such examinations to be kept confidential, except that supervisors and managers may be informed regarding necessary restrictions on the work or duties or necessary accommodations for the employee. First aid and safety personnel also may be informed, when appropriate, if the disability might require emergency treatment. Government officials investigating ADA compliance must be provided relevant information upon request.

c. After Employment Begins

Employers may conduct medical examinations or make inquiries of employees that are job-related and consistent with business necessity. The regulations also allow employers to conduct voluntary medical examinations which are part of an employee health program, available to employees at the work site.

8. Architectural Changes

As noted above, the child care facility may be required to make physical changes to its facilities in certain cases if this is part of a reasonable accommodation for a disabled applicant or employee. These changes would, of course, be required only if they do not create an undue hardship for the child care facility.

In addition, the child care facility has a duty under the ADA to remove existing architectural or structural barriers from its centers where such removal is "readily achievable" (as defined in the statute and regulations).

Finally, the child care facility must make facilities accessible to the disabled if:

- the facility is newly constructed (i.e., designed and constructed for first occupancy on or after January 26, 1993), or
- an existing facility is altered on or after January 26, 1992 in a manner that affects access or usability by the disabled.

9. Enforcement

The ADA extends the administrative, enforcement and remedial provisions of Title VII of the Civil Rights Act of 1964 to persons alleging discrimination on account of disability. Thus, for example, the EEOC will receive and investigate complaints from individuals claiming discrimination. In addition, the EEOC, the Attorney General, or any individual alleging discrimination on the basis of disability may file suit under the ADA. The ADA also adopts the remedies contained in Title VII for enforcement of the employment provisions (for example, reinstatement, backpay, injunctive relief, attorney's fees).

* * * * *

The EEOC has indicated that it intends to issue more specific guidance on a number of topics (including theories of discrimination, definitions of "disability" and "qualified individual with a disability," "reasonable accommodation" and "undue hardship," and "pre-employment inquiries") in an upcoming Compliance Manual. The EEOC also has stated that, in the future, it expects to address several complicated issues, including pre-employment inquiries concerning an individual's workers' compensation history, and the relationship between collective bargaining agreements and such matters as undue hardship, reassignment, and confidentiality.

## III. Public Accommodations

Beginning January 26, 1992, the ADA prohibits child care facilities from discriminating against any individual on the basis of disability in the full and equal enjoyment of their goods, services, facilities, privileges, advantages, and accommodations. The Act requires that these activities be provided in the most integrated setting appropriate to the disabled individual's needs. The regulations state that the determination as to whether a setting is "appropriate" and what the "needs" are should be based on an objective view, presumably one that takes into account the views of both the disabled individual and the child care facility. The Act permits different or separate services only when necessary to provide persons with disabilities opportunities as effective as those provided others.

1. Prohibited Discrimination

a. Eligibility Criteria

The ADA prohibits the imposition of eligibility criteria that screen out or tend to screen out individuals with disabilities, unless the criteria are necessary. Safety rules and criteria may be imposed if they are necessary for the safety of the operation. Safety criteria must be based on actual risks rather than on stereotypes or generalizations about people's abilities. The child care facility is not required to provide services of a personal nature, including assistance in toileting, eating, or dressing, if it does not provide these same services to similarly-situated individuals. The child care facility may not place a surcharge on a particular individual with a disability or any group of individuals with disabilities to cover the costs of measures, such as the provision of auxiliary aids and services, barrier removal, alternatives to barrier removal, and reasonable modifications in policies, practices, and procedures, that must be provided to meet the Act's mandate of nondiscriminatory treatment. However, the child care facility may charge for "extra" services provided to individuals with disabilities (e.g., cleaning a colostomy). Of course, the problem will be determining what the law requires the child care facility to do and what is "extra."

b. Reasonable Modifications of Policies

A failure to make reasonable changes in policies, practices, and procedures when modifications are necessary is also prohibited. An exception is made if the modification would fundamentally alter the nature of the benefit offered.

c. Auxiliary Aids and Services

The child care facility must provide disabled persons with auxiliary aids or services (e.g., telecommunications aids), unless the child care facility can demonstrate that doing so would fundamentally alter the nature of the service provided or would result in an undue burden. Assuming that the child care facility offers telephone service to its customers on no more than an incidental convenience

basis, the child care facility is not required to make a telecommunication device for the deaf (TDD) available to an individual with impaired hearing or speech.

d. Removal of Barriers

The removal of barriers is discussed in Section IV(8) of this memorandum.

e. Alternatives to the Removal of Barriers

Where the child care facility can demonstrate that removal of a barrier is not readily achievable, it must make its services available through alternative methods, if such methods are readily achievable.

f. Transportation

The child care facility must remove transportation barriers in existing vehicles to the extent that it is readily achievable to do so, but the installation of hydraulic or other lifts is not required. The chart below concerns when a private entity not primarily engaged in the business of transporting people must acquire an accessible vehicle. This section applies to all purchases or leases of vehicles, in which a solicitation for the vehicle is made after August 25, 1990.

| System type | Vehicle seating capacity | Requirement |
|---|---|---|
| Fixed Route..... | Over 16..... | Accessible vehicle. |
| Fixed Route..... | 16 or less..... | Accessible vehicle unless service is equivalent. |
| Demand Responsive. | Over 16..... | Accessible vehicle unless service is equivalent. |
| Demand Responsive. | 16 or less..... | No requirement.* |

* But §37.125(a) requires provision of equivalent service.

"Fixed route system" means any system of transporting individuals by vehicle on a prescribed route according to a fixed schedule which does not require an advance request by a passenger to ensure that service is provided. "Demand responsive system" means any system of transporting individuals by vehicle at the request of the user.

"Equivalent service" means that the system, when viewed in its entirety, provides service to individuals with disabilities, including individuals who use wheelchairs, in the most integrated setting appropriate to the needs of the individual and is equivalent to the service provided other individuals with respect to the service characteristics, such as schedules, geographic area of service, and hours and days of service.

2. Health and Safety Exception

The Act makes an exception where an individual poses a direct threat to the health or safety of others, but only if the threat cannot be eliminated by a modification of policies or an auxiliary aid or service. In determining whether an individual poses a direct threat to the safety or health of others, the child care facility is required to make an individualized assessment, based on reasonable judgment that relies on current medical evidence or on the best available objective evidence, to determine: The nature, duration, and severity of the risk; the probability that the potential injury will actually occur; and whether reasonable modifications of policies, practices, or procedures will mitigate the risk. According to the regulations, this assessment will not usually require the services of a physician. Sources of medical knowledge include guidance from public health authorities, such as the U.S. Public Health Service, the Centers for Disease Control, and the National Institutes for Health, including the National Institute of Mental Health. Common short-term illnesses that predictably resolve themselves within a matter of days, such as fevers, influenza, or the common cold, do not "substantially limit" a major life activity; therefore, it is not a violation to exclude individuals from the child care facility because of such transitory illnesses.

3. New Construction and Alterations in Public Accommodations

New construction and alterations is discussed in Section IV(8) of this memorandum.

a. "Readily Accessible"

"Readily accessible to and usable by" means that people with disabilities should be able to get to, enter, and use the facility. The term includes accessible parking areas, accessible routes to and from the facility, accessible entrances, usable bathrooms and water fountains, and accessible public and common use areas.

4. Enforcement

Private individuals may bring lawsuits in which they can obtain court orders to stop discrimination. Individuals may also file complaints with the Attorney General, who is authorized to bring lawsuits of general public importance or where a "pattern or practice" of discrimination is alleged. In these cases, the Attorney General may

seek monetary damages and civil penalties. Civil penalties may not exceed $50,000 for a first violation or $100,000 for any subsequent violation.

## IV. Americans with Disabilities Act Checklist[2]

### TITLE I – Employment

### A. Recruitment

1. Recruitment materials include positive reference to persons with disabilities in photos and written words and cite the child care facility's commitment to nondiscrimination.

2. All positions are open to qualified applicants with disabilities seeking opportunities for career advancement.

3. The child care facility refuses to participate in a contractual or other relationship with an employment or referral agency, an organization providing fringe benefits, or an organization providing training and apprenticeship programs that appears to subject qualified applicants to discrimination.

4. The child care facility trains managers and supervisors concerning the ADA's requirements.

### B. Preselection Criteria

1. Rooms in which interviews are conducted are accessible to persons with all types of disabilities, including mobility limitations.

2. At least one person is trained to administer tests designed for applicants with impaired sensory, manual, or speaking skills.

3. Applicants are notified that alternate means of testing are available.

4. Any tests, forms, or selection criteria used relate strictly to a specific job and are consistent with business necessity.

5. Neither applications nor interviewers ask whether an applicant has a disability or question the nature or extent of a disability (but may solicit information regarding an applicant's ability to perform essential job functions).

6. If a particular job raises safety considerations, any eligibility criteria regarding mental or physical abilities developed to ensure safe performance shall include only criteria that are each objectively and

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[2]Adapted from a checklist prepared by the National Easter Seal Society.

demonstrably necessary for safety in the performance of the essential functions of the specific job.

7. No preemployment medical examinations are required (but may be required after an offer of employment if all entering employees are subjected to the same examination regardless of disability).

8. Information obtained in any medical exam is collected and maintained on separate forms and in separate medical files.

9. Medical history and information is considered confidential and shared only with supervisors and managers concerned with work restrictions and accommodations, personnel who provide first aid and emergency treatment that may be needed, and government officials investigating compliance with ADA.

10. Job descriptions should be reviewed to assure that they are current and accurately reflect the essential functions of the job.

**C. Reasonable Accommodations**

1. Reasonable accommodations to the known physical or mental limitations of an employee are provided throughout the employee's term of employment unless the accommodations impose an "undue hardship" on the child care facility's operations.

2. Accommodations suitable for individual employees are determined on a case-by-case basis by _____ in consultation with _____ and the individual involved after obtaining information and input from appropriate disability-related organizations and other agencies and groups with expertise on such accommodations.

3. Accommodations may include, but are not limited to:

   a. Making existing facilities used by all employees readily accessible to and usable by individuals with disabilities.

   b. Restructuring a job by eliminating nonessential elements, redelegating nonessential tasks, exchanging nonessential assignments with another employee, or introducing other modifications that enable the employee with a disability to perform the essential functions of a position.

   c. Allowing constant shifts and part-time or modified work schedules.

d. Reassigning or transferring an employee to another vacant job for which he or she is qualified.

e. Adjusting marginal job requirements, such as the need to hold a drivers license, that are nonessential for performing a specific job.

f. Acquiring or modifying equipment or devices such as adapted hardware or software for computers or talking calculators for employees with vision impairments, telephone handset amplifiers or telecommunication devices for the deaf (TDDs) for persons with hearing impairments, and mechanical page turners or raised or lowered furniture for persons with limited dexterity.

g. Providing readers for persons with blindness, interpreters for individuals with deafness, or attendants for those with severe mobility limitations, when feasible.

4. Employees and job applicants are notified of the child care facility's obligation under ADA to make reasonable accommodations.

5. The child care facility does not discriminate against any qualified employee or applicant (because of a disability or because the individual has a relationship with a disabled person) in any term, condition, or privilege of employment, including -- but not limited to -- the following areas:

a. Upgrade
b. Promotion
c. Award of tenure
d. Demotion
e. Transfer
f. Termination
g. Rehiring
h. Compensation and change in compensation
i. Job assignment
j. Job classification
k. Organizational structure
l. Line of progression
m. Leave of absence
n. Sick leave or any other leave
o. Fringe benefits, including health and other insurance coverage and provisions, available to all by virtue of employment
p. Selection and financial support for training, including apprenticeships, professional meetings, and related activities

q. Employer-sponsored activities, including social or recreational programs

**TITLE III – Public Accommodations**

1. No standards, criteria, or methods of administration that discriminate on the basis of disability or that perpetuate the discrimination of others who are subject to common administrative control are used by the child care facility either directly or through contractuals or other arrangements.

2. No person is denied equal goods, services, privileges, advantages, accommodations, or other opportunities because of a person's disability or because of a person's known association or relationship with an individual who has a disability.

3. No eligibility criteria that screen out an individual with a certain disability or require a person to identify the existence of a disability are used unless the criteria are necessary for the provision of the service, privilege, advantage, or accommodation offered.

4. No criteria limit participation of an individual with a disability by imposing requirements or restrictions not imposed for others (e.g., chaperons for wheelchair users, seating in designated areas).

5. No unrealistic policies bar persons with disabilities from full access to service available to other customers (e.g., requiring a person with blindness who is picking up a child to show a drivers license as a form of identification rather than other appropriate identification).

6. The child care facility makes reasonable modifications in policies, practices, and procedures (e.g., modifies rules barring dogs to allow entry by seeing eye, and other service dogs; opens a usually locked door for a person in a wheelchair) unless doing so would fundamentally alter the nature of goods, services, facilities, privileges, advantages, and accommodations.

7. The child care facility takes necessary steps to provide auxiliary aids and services to make its goods, services, facilities, privileges, advantages, and accommodations open equally to persons with disabilities of all kinds unless doing so would be an undue burden or fundamentally alter the nature of the offering.

8. The child care facility removes architectural, transportation, and communication barriers that are structural in nature in existing facilities if they are readily achievable (easily accomplishable, not too costly). These include, but are not limited to:

a. Addition of grab bars in restrooms
b. Ramping of steps
c. Lowering of telephones
d. Addition of raised letters or braille markings on elevator control buttons
e. Installation of flashing light alarms
f. Rearrangement of furniture or equipment

9. When barrier removal is not readily achievable, the child care facility makes its services available through alternative means that may be readily achievable.

10. New centers constructed for occupancy on or after January 26, 1993 are readily accessible to and usable by individuals with disabilities -- including mobility, cognitive, and sensory impairments -- unless accessibility features are structurally impracticable.

11. When alterations are undertaken in existing centers, the altered portions are readily accessible and usable by persons with disabilities, to the extent feasible.

12. When undertaking alterations that affect primary function areas (e.g., passageways, entrances of a center, the child care facility makes sure that the path of travel to the altered areas as well as the bathrooms, telephones, and drinking fountains serving the areas are readily accessible to and usable by individuals with disabilities *if* these alterations are not disproportionate to the overall alterations in terms of cost and scope.

13. New or altered centers that are over 3,000 square feet and more than two stories high are elevator equipped. (Section 190 of the Internal Revenue Code allows businesses to deduct up to $35,000 a year to remove architectural and transportation barriers in their places of business.)

## V. Examples of Disabilities

**Attention Deficit Disorder and Hyperactivity**

**Autism**

**Emotional/Behavioral Disorders**
- Emotional disturbance
- Behavioral disabilities

**Health Impairments**
- AIDS
- Anemia
- Asthma/Severe allergy
- Cancer
- Colostomy
- Cystic fibrosis
- Diabetes
- Epilepsy or convulsive disorders
- Hemophilia
- Obesity
- Pituitary problems, hypothyroidism, and diabetes

**Language Disabilities**
- Speech disorders
  - Articulation
  - Rhythm
  - Resonance
  - Speech motor
- Communication disorders
  - Expressive language disorders
  - Developmental aphasia
  - Receptive language disorders

**Mental Retardation**

**Motor Disabilities**
- Arthritis
- Burns
- Cerebral palsy
- Lost or deformed limbs
- Multiple sclerosis
- Muscular dystrophy
- Spina bifida
- Spinal cord damage
- Wheelchair use

**Sensory Impairments**
- Hearing
- Sight

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